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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 181/2019

ISHA NATURAL BEAUTY PRODUCTS AND WELLNESS PVT. LTD. ..... Petitioner

Through: Mr Jayant Bhushan, Senior Advocate with Mr Sudhir Nandrajog, Senior Advocate and Mr Shishir Sharma, Ms Aditi Awasthy and Mr Angad Verma, Advocates.

versus

UNION OF INDIA AND ORS. ..... Respondents

Through: Mr Kirtiman Singh, CGSC with Mr Ravi Prakash, CGSC and Ms Shruti Dutt with Mr Varun Pathak, Mr Farman Ali and Mr Kunal Bhargava, Advocates for R-1.
Mr Digvijay Rai and Mr Kaustubh Singh, Advocates for AAI/R-2.
Mr Parag P. Tripathi, Senior Advocate with Mr Rishi Agrawala, Mr Karan Luthra, Mr Ankit Banati, Ms Mishika Bajpai and Ms Niyati Kohli, Advocates for R-3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **11.01.2019**

CM No. 885/2019

1. Exemption is allowed, subject to all just exceptions.

2. The application stands disposed of.

W.P.(C) 181/2019 and CM No. 884/2019

3. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondents to consider the petitioner's request for extension of the license terms under the License Agreement dated 05.05.2010 read with Supplementary Agreement dated 20.07.2017 in a fair, reasonable and transparent manner.

4. The petitioner was awarded the contract pursuant to a request for quotation (RFQ) issued by respondent no.3 (DIAL) on 05.03.2010. It is stated that following the RFQ, the petitioner submitted its offer and a Letter of Award was issued by respondent no.3 in favour of the petitioner whereby the petitioner was granted a license to operate a "India Experience Zone" from unit No. 25/26, located at Terminal 3, International Departure (+10 Level), Indira Gandhi International Airport, Delhi, measuring 344 square yards. The license to operate the said Zone was initially for a period of seven years. Thereafter, on 20.07.2017, which is prior to expiry of the initial terms of the agreement, DIAL executed a supplementary agreement with the petitioner, extending the terms of the license which, the petitioner claims, was on account of its "stellar performance". He further states that the Supplementary Agreement also included a renewal clause and provided that the license could be extended at the discretion of DIAL.

5. At the outset, Mr Tripathi, learned Senior Counsel appearing for DIAL pointed out that the petitioner has concealed that after the execution of the Supplementary Agreement, the petitioner also entered into another Supplementary Agreement dated 12.07.2018, whereby the petitioner had agreed that the term of the license shall be valid only till 21.01.2019 and the

licensee shall stop using the location on or before 31.01.2019. A copy of the said Supplementary Agreement dated 12.07.2018 has also been handed over to this Court.

6. Mr Bhushan, learned Senior Counsel appearing for the petitioner contended that there was no concealment as at page 32 of the writ petition, the petitioner has averred that the petitioner "being left with no other alternative, was compelled to state it in their email dated 20.06.2018 that they would stop operation from 21.01.2019". He states that in view of the said averment, the contention that the petitioner has concealed any material fact is erroneous.

7. The aforesaid contention that the petitioner has not concealed any material fact is unmerited. It is clear from the above that the petitioner has wilfully concealed a vital document, whereby the petitioner had agreed to stop using the location on or before 31.01.2019. Clause 3 of the said Supplementary Agreement dated 12.07.2018, which the petitioner has conveniently failed to mention in its petition, is set out below:-

> "**3. CONSEQUENCES OF EXPIRY OF EXTENDED TERM**
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> The Licensee shall, on or before 31st January 2019, stop using the Location. The Licensee shall remove all its interior fit outs from such Location at the Licensee's own cost, failing which DIAL shall have the right to initiate and take necessary steps to remove the Licensee's materials and other materials and sell the same at such price as it may get and utilize the proceeds of payment towards any outstanding amounts due from the Licensee (including cost of such removal). The Licensee undertaken to restore the

> Location in their original state and form.
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> The Licensee shall remove such additions, fittings and fixtures from the Location as DIAL shall specify in writing and repair any damage to the Location arising from such removal to the satisfaction of DIAL. In this regard, the Licensee shall make all necessary submissions and obtain the approvals from the relevant authority for such removal and repair.
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> On making a perpetual exit from the Location by the Licensee to the satisfaction of DIAL, DIAL shall refund the Security Deposit after making such deductions there from as provided for under this Clause 15 and Clause 5.3 of the License Agreement."

8. The petitioner has enjoyed the extension of the said license and has approached this Court at this stage just ten days prior to the expiry of the license and by concealing the fact that it had entered into the agreement as referred to above. In view of the above, this Court is of little doubt that the petitioner is not entitled to any discretionary relief.

9. Furthermore, the petitioner's request that the petitioner be permitted to continue using the location till an alternative licensee is located by a transparent process, also cannot be acceded to. The petitioner has clearly no right to continue using the location after having solemnly agreed to stop using the same on 31.01.2019.

10. The petitioner has also raised a larger issue, that is, whether DIAL is entitled to sub-lease or license premises without following the competitive process. Since this question involves public interest, this Court considers it apposite to hear this petition only on this issue. However, in view of the fact that the petitioner has concealed a vital document, this Court also consider it

apposite to impose cost as a punitive measure on the petitioner.

11. At this stage, Mr Tripathi, learned Senior Counsel states, on instructions, that without prejudice to its contention that DIAL is not obliged to follow the open competitive bidding process in relation to contracts with the value of less than ₹50 crores, DIAL would undertake that insofar as area occupied by the petitioner is concerned, the same would only be dealt with only by an open and transparent bidding process.

12. The said statement made by respondent no.3 is taken on record. DIAL is bound down to the same and in view of the above, no further orders are required to be passed in this petition. The question whether DIAL is required to follow an open bidding process in relation to the contracts below the value ₹50 crores is left open and would be considered in an appropriate case.

13. The petition is dismissed with costs quantified at Rs. 50,000/-. The costs shall be deposited with the Delhi Legal Aid Committee within a period of two weeks from today.

14. The pending application is disposed of.

VIBHU BAKHRU, J

JANUARY 11, 2019
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